

## Message Text

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ACTION OPIC-06

INFO OCT-01 ARA-06 ISO-00 EB-08 COME-00 CIAE-00 INR-07  
NSAE-00 AID-05 /033 W  
-----110411Z 130809 /63

R 102150Z FEB 77  
FM AMEMBASSY QUITO  
TO SECSTATE WASHDC 3187  
INFO AMEMBASSY BOGOTA  
AMEMBASSY CARACAS  
AMCONSUL GUAYAQUIL  
AMEMBASSY LA PAZ  
AMEMBASSY LIMA

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E.O. 11652: N/A  
TAGS: EINV EC  
SUBJ: ANDEAN POLICY TOWARD RESUMPTION OF OPIC PROGRAMS

REFS: (A) QUITO 637; (B) STATE 22807

1. BEGIN SUMMARY: GOE IS EAGER TO HAVE OPIC RESUME ITS VARIOUS TYPES OF PROGRAMS IN ECUADOR, BUT IS LEERY OF CONTRAVENING GOE'S COMMITMENTS UNDER ARTICLE 51 OF DECISION 24 OF THE ANDEAN PACT. THE GOE EXPECTS THE MEETING OF THE ANDEAN COMMISSION WHICH STARTS IN LIMA ON FEBRUARY 14 TO ARRIVE AT A DEFINITIVE UNIFORM POLICY FOR THE MEMBER GOVERNMENTS VIS-A-VIS THE OPIC PROGRAMS. GOE MINISTER GALO MONTANO, CURRENTLY PRESIDENT OF THE ANDEAN COMMISSION, WILL UNDOUBTEDLY TRY TO HAVE THE MEETING PRODUCE A POLICY THAT PERMITS OPIC TO RESUME ITS PROGRAMS IN THE ANDEAN COUNTRIES. END SUMMARY.

2. THOMAS MANSBACK OF OPIC AND THE EMBASSY'S E/C COUNSELOR CALLED ON ROQUE CANADAS, DIRECTOR GENERAL OF ECONOMIC AFFAIRS  
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OF THE GOE FOREIGN MINISTRY, ON FEBRUARY 9 TO DISCUSS STATUS OF PROPOSED USG-GOE EXCHANGE OF NOTES RE INVESTMENT GUARANTEES AND TO SEEK DEFINITIVE RESPONSES TO THE QUERIES RAISED IN REF B.

3. RE EXCHANGE OF NOTES, CANADAS INDICATED THAT THE GOE WISHES TO BE AS FORTHCOMING AS POSSIBLE BUT ALSO WISHES TO

ACT CONSISTENTLY WITH COMMITMENTS UNDER ARTICLE 51 OF THE ANDEAN PACT'S DECISION 24 REGARDING PROCEDURES FOR ARBITRATION AND SUBROGATION. CANADAS ASKED WHAT THE OTHER ANDEAN GOVERNMENTS HAVE BEEN DOING TO REACH ACCOMMODATION WITH OPIC'S REQUIREMENTS. MANSBACK CITED SPECIFIC EXAMPLES OF OTHER GOVERNMENTS' ATTITUDES AND ACTIONS TENDING TO RECOGNIZE OPIC'S REQUIREMENTS AS BEING CONSISTENT WITH ARTICLE 51.

MANSBACK ALSO GAVE GENERAL EXPLANATION OF WAYS IN WHICH ARTICLE 51 COULD BE REASONABLY INTERPRETED AS NOT APPLYING (REPEAT NOT) APPLYING TO LOANS, LOAN GUARANTEES, CONSTRUCTION CONTRACTS, EQUITY INVESTMENTS IN PROJECTS DESIGNED TO SERVE DOMESTIC MARKETS OR NON-ANDEAN MARKETS, AND BILATERAL AGREEMENTS BETWEEN THE USG AND A HOST GOVERNMENT; AND HE NOTED MECHANISMS BY WHICH OPIC (OR THE OVERSEAS INVESTMENT INSURANCE GROUP-- OIIG) COULD BE VIEWED AS BEING OTHER THAN A "STATE," AS THAT TERM IS USED IN ARTICLE 51. HE ALSO STRESSED THAT OPIC AND THE OIIG SEEK TO BECOME SUBROGATED ONLY TO THOSE RIGHTS WHICH THE EXPROPRIATED PRIVATE COMPANY HAD UNDER THE LAWS OF THE HOST COUNTRY. HE STRESSED THAT ALL REMEDIES AVAILABLE THROUGH THE ECUADOREAN COURTS MUST BE EXHAUSTED, AND THAT ONLY QUESTIONS OF PUBLIC INTERNATIONAL LAW AND OF DENIAL OF RIGHTS WOULD BE SUBJECT TO INTERNATIONAL ARBITRATION. FINALLY, HE STRESSED THAT IN THE NEARLY THIRTY YEARS OF THE OPERATION OF PROGRAMS OF OPIC AND ITS PREDECESSOR AGENCIES, THERE HAS NEVER BEEN A RESORT TO INTERNATIONAL ARBITRATION.

4. CANADAS SHOWED MUCH INTEREST IN THESE OBSERVATIONS  
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BUT WAS NONCOMMITTAL AS REGARDS ACCEPTING THEM AND TRYING TO WORK OUT AN EXCHANGE OF NOTES IN ACCORDANCE WITH THEM. HE SAID THAT AT THE MEETING OF THE ANDEAN COMMISSION SCHEDULED TO BEGIN IN LIMA ON FEBRUARY 14 THE QUESTION OF RE-ENTRY OF OPIC INTO THE ANDEAN REGION WILL PROBABLY BE DISCUSSED, AND HE SAID THERE IS A FAIRLY GOOD LIKELIHOOD THAT THE MEETING WILL PRODUCE A DEFINITIVE UNIFORM POLICY ON THE PART OF THE FIVE MEMBER GOVERNMENTS REGARDING THIS. HE SAID HE WOULD ACCORDINGLY AWAIT THE OUTCOME OF THAT SESSION, AND WOULD THEN PROMPTLY TRANSMIT TO THE EMBASSY A NEW PROPOSED TEXT FOR THE EXCHANGE OF NOTES.

5. REGARDING THE QUESTIONS (REF B) OF WHETHER THE GOE MINISTRY OF INDUSTRIES, COMMERCE AND INTEGRATION (MICEI) IS THE DIRECT SUCCESSOR TO THE INSTITUTO DE COMERCIO EXTERIOR E INTEGRACION, AND WHETHER FGA AUTHORIZATION HAD BEEN DIRECTLY TRANSFERRED TO THE NEW MINISTRY, HE SAID THE ANSWER IN BOTH CASES WAS AFFIRMATIVE. HE OFFERED TO FIND AND SEND TO THE EMBASSY THE TEXT OF THE DECREE THAT ESTABLISHED MICEI, WHICH

WOULD SHOW, HE SAID, THAT MICEI HAS AUTHORITY TO DO WHATEVER  
THE INSTITUTO HAD BEEN AUTHORIZED TO DO.

6. DURING MANSBACK'S STAY OF LESS THAN 24 HOURS IT PROVED  
IMPOSSIBLE TO OBTAIN AN APPOINTMENT FOR HIM AND THE E/C  
COUNSELOR WITH THE MINISTER OF INDUSTRIES, COMMERCE AND  
INTEGRATION, GALO MONTANO, TO DISCUSS THE ABOVE MATTERS.

7. EMBASSY COMMENT: MINISTER MONTANO IS CURRENTLY THE  
PRESIDENT OF THE ANDEAN COMMISSION, AND WILL BE HEADING THE  
GOE DELEGATION TO THE MEETING THAT STARTS FEBRUARY 14. HE IS  
CLEARLY ANXIOUS TO REACH AN ACCOMMODATION PERMITTING OPIC  
TO RESUME PROGRAMS OF ALL TYPES IN ECUADOR. WE BELIEVE HE  
WILL STRIVE FOR THAT OUTCOME AT THE IMPENDING MEETING IN  
LIMA. TO FACILITATE SUCH AN OUTCOME, THE E/C COUNSELOR WILL  
PROVIDE TO MONTANO ON FEBRUARY 10 AN OUTLINE OF THE POINTS  
MANSBACH SET FORTH TO CANADAS RE THE COMPATABILITY  
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OF OPIC'S OPERATIONS WITH THE REQUIREMENTS OF ARTICLE 51 OF  
DECISION 24.  
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## Message Attributes

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